

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2016-31-T**

In Re:)
)
Application of Newton Moving & Storage,)
LLC, doing business as Monro Moving &)
Storage Co., to Transfer Class E Certificate)
nunc pro tunc and to Amend Scope of)
Authority to Provide Statewide Service)
)
_____)

**MOTION TO WAIVE HEARING
AND FOR EXPEDITED REVIEW**

Newton Moving & Storage, LLC, doing business as Monro Moving & Storage, Co., (“Newton Moving” or “Applicant”) filed an Application to Transfer Class E Certificate No. 9687 from Monro Moving & Storage Co. (“Monro Moving”) to Newton Moving *nunc pro tunc*, and to amend the scope of authority to provide statewide service (“Application”). Newton Moving moves pursuant to 10 S.C. Code Ann. Regs. 103-134, and other applicable rules of practice and procedure of the Public Service Commission of South Carolina (“Commission”) that the Commission perform an expedited review of the Application. The Applicant requests that the Commission use its discretionary authority to informally dispose of the proceeding without holding a formal hearing. We respectfully request that the Commission place consideration of the Application on its agenda at its next meeting. In support of this motion Newton Moving would show the following:

1. Newton Moving seeks to transfer Monro Moving & Storage Co.’s Class E Certificate to transport household goods *nunc pro tunc* and seeks to expand its scope of authority. The Application was filed on January 20, 2016. Newton Moving filed the Asset Purchase Agreement between Newton Moving and Monro Moving as a Supplemental Exhibit to its Application on

February 12, 2016. Newton Moving is filing Exhibits 1.1.9, 2.8, and 2.9 of the Asset Purchase Agreement simultaneously with this motion.

2. Newton Moving published notice of the filing of the Application in area newspapers as required by the Commission. The deadline to intervene was February 19, 2016. No parties have intervened and opposed the application.

3. The Commission allowed Newton Moving to take the deposition of its shipper witness by telephone and file the deposition transcript in lieu of pre-filed shipper witness testimony by Order No. 2016-13-H. Newton Moving's shipper witness David Steele's telephone deposition was held on February 22, 2016. Counsel for Newton Moving and the S.C. Office of Regulatory Staff ("ORS") participated in the deposition. The deposition was filed with the Commission on February 24, 2016.

4. We have provided a copy of this motion to ORS and ORS does not oppose the Application or this motion requesting expedited review.

5. Shipper witness Steele's deposition supports the need to expand the scope of authority for the Class E Certificate. The Application and Supplemental Exhibit serve as Newton Moving's prefiled testimony. These documents support that the Applicant meets the fit, willing and able requirements of 10 S.C. Code Ann. Regs. 103-135. We respectfully request that the Commission's decision be based on the application, the supplemental exhibits, and the shipper witness deposition.

ARGUMENT

6. Newton Moving filed its Application pursuant to 10 S.C. Code Ann. Regs. 103-135 (Supp. 2015). The Commission's regulations do not require that the Commission conduct a formal hearing on a pending application. 10 S.C. Code Ann. Regs. 103-134 provides that "(w)hen an application for a Certificate of P&CN is submitted and there is no opposition, the commission *may*

hold a hearing if it deems necessary for the purpose as it shall determine....” (emphasis added). The motor carrier statutes also do not require a hearing unless there is opposition to an application. *See* S.C. Code Ann. § 58-23-210.

7. The Applicant seeks expedited review of its Application on the grounds that (1) due process requirements are satisfied if the Applicant waives the right to a hearing when there is no disputed material issue of fact and (2) notice and the opportunity to present written evidence is sufficient to provide the procedural due process protection. Newton Moving submits that the Application as amended, shipper witness testimony and related documents demonstrate that the Applicant is fit, willing and able to provide the service without the need for a public hearing.

8. Newton Moving has consulted with counsel for ORS. ORS does not object to the request for expedited review. Of course, if there are issues that the Commission believes remain unresolved, Newton Moving would welcome the opportunity to provide whatever information the Commission deems appropriate by whatever means the Commission desires, including the presentation of live testimony. The shipper witness testimony supports the need for another household goods carrier to serve the entire State of South Carolina. The Application demonstrates that Newton Moving is fit, willing and able to provide the service without the need for a public hearing.

9. Administrative agencies in South Carolina "are required to meet minimum standards of due process. Due process is flexible and calls for such protections as the particular situation demands." *Stono River Environmental Protection Association v. S.C. Dept. of Health and Environmental Control*, 406 S.E.2d 340, 342 (S.C. Sup. Ct. 1992); *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

10. The Administrative Procedures Act (“APA”) ensures that procedural due process requirements are satisfied. The APA also provides some flexibility to agencies regarding hearings for

contested cases. "Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default." S.C. Code Ann. § 1-23-320(f) (Supp. 2015). Notice of the Application was published as required by the Commission. Therefore, notice and an opportunity for a hearing have been provided. The Applicant respectfully request that the Commission dispose of the proceeding without requiring a formal hearing.

11. Holding a formal hearing "is appropriate where adjudicative facts involving the particular parties are at issue. Conversely, an agency may ordinarily dispense with hearing where there is no genuine dispute as to a material issue of fact." 2 Am. Jur.2d *Administrative Law* § 298. In addition, "the right to a hearing...may be waived." 2 Am. Jur.2d *Administrative Law* § 296. The Applicant is requesting the hearing be waived and, subsequent to the filing of all proper forms, the transfer of the expanded Class E Certificate from Monro Moving to Newton Moving. ORS does not object to the request for expedited review. Therefore, there is no material issue of fact to be decided at a formal hearing.

WHEREFORE, Newton Moving respectfully requests that the Commission informally dispose of the proceeding without holding a hearing and grant its request to issue a Class E Certificate based on the record of the case.

Dated this 29th day of February, 2016.

ROBINSON, McFADDEN & MOORE, P.C.

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